

SECOND REGULAR SESSION

SENATE BILL NO. 1125

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODE.

Read 1st time January 22, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4194S.02I

AN ACT

To repeal sections 386.370, 386.390, and 393.190, RSMo, and to enact in lieu thereof four new sections relating to consumer protection.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 386.370, 386.390, and 393.190, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 386.370, 386.390, 386.900, and 393.190, to read as follows:

386.370. 1. The commission **and the public counsel** shall, prior to the beginning of each fiscal year beginning with the fiscal year commencing on July 1, 1947, **each** make an estimate of the expenses to be incurred by [it] **them** during such fiscal year reasonably attributable to the regulation of public utilities as provided in chapters 386, 392 and 393, RSMo, and shall **each** also separately estimate the amount of such expenses directly attributable to such regulation of each of the following groups of public utilities: Electrical corporations, gas corporations, water corporations, heating companies and telephone corporations, telegraph corporations, sewer corporations, and any other public utility as defined in section 386.020, as well as the amount of such expenses not directly attributable to any such group.

2. The commission **and the public counsel** shall **each** allocate to each such group of public utilities the estimated expenses directly attributable to the regulation of such group and an amount equal to such proportion of the estimated expenses not directly attributable to any group as the gross intrastate operating revenues of such group during the preceding calendar year bears to the total gross intrastate operating revenues of all public utilities subject to the jurisdiction of the commission, as aforesaid, during such calendar year. The commission **and the public counsel** shall **each** then assess the amount so allocated to each group of public utilities, subject to reduction as herein provided, to the public utilities in such

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

group in proportion to their respective gross intrastate operating revenues during the preceding calendar year, except that the total amount so assessed to all such public utilities shall not exceed one-fourth of one percent of the total gross intrastate operating revenues of all utilities subject to the jurisdiction of the commission.

3. The commission **and the public counsel** shall **each** render a statement of such assessment to each such public utility on or before July first and the amount so assessed to each such public utility shall be paid by it to the director of revenue in full on or before July fifteenth next following the rendition of such statement, except that any such public utility may at its election pay such assessment in four equal installments not later than the following dates next following the rendition of said statement, to wit: July fifteenth, October fifteenth, January fifteenth and April fifteenth. The director of revenue shall remit such payments to the state treasurer.

4. The state treasurer shall credit such payments to a special fund, which is hereby created, to be known as "The Public Service Commission **and Public Counsel** Fund", which fund, or its successor fund created pursuant to section 33.571, RSMo, shall be devoted solely to the payment of expenditures actually incurred by the commission **and the public counsel** and attributable to the regulation of such public utilities subject to the jurisdiction of the commission, as aforesaid. Any amount remaining in such special fund or its successor fund at the end of any fiscal year shall not revert to the general revenue fund, but shall be applicable by appropriation of the general assembly to the payment of such expenditures of the commission **and the public counsel** in the succeeding fiscal year and shall be applied by the commission **and the public counsel** to the reduction of the amount to be assessed to such public utilities in such succeeding fiscal year, such reduction to be allocated to each group of public utilities in proportion to the respective gross intrastate operating revenues of the respective groups during the preceding calendar year.

5. In order to enable the commission **and the public counsel** to make the allocations and assessments herein provided for, each public utility subject to the jurisdiction of the commission as aforesaid shall file with the commission **and the public counsel**, within ten days after August 28, 1996, and thereafter on or before March thirty-first of each year, a statement under oath showing its gross intrastate operating revenues for the preceding calendar year, and if any public utility shall fail to file such statement within the time aforesaid the commission **and the public counsel** shall estimate such revenue which estimate shall be binding on such public utility for the purpose of this section.

386.390. 1. Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, **alleging that a public utility's rates are excessive, or otherwise** setting forth any act

or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission[; provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service].

2. All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties; and in any review by the courts of orders or decisions of the commission the same rule shall apply with regard to the joinder of causes and parties as herein provided.

3. The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant. Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the public utility, corporation or person complained of.

4. Service in all hearings, investigations and proceedings pending before the commission may be made upon any person upon whom summons may be served in accordance with the provisions of the code of civil procedure of this state, and may be made personally or by mailing in a sealed envelope with postage prepaid.

5. The commission shall fix the time when and the place where a hearing will be had upon the complaint and shall serve notice thereof, not less than ten days before the time set for such hearing, unless the commission shall find that the public necessity requires that such hearing be held at an earlier date.

6. If the complaint alleges that a public utility's rates are excessive, the public utility shall, within thirty days or such lesser time as may be prescribed by the commission, file a bond or undertaking approved by the commission conditioned upon the refund in a manner prescribed by the commission of amounts collected after the date of filing of the petition in excess of rates and charges finally determined by the commission to be lawful, with interest thereon at the legal rate. If, upon hearing, the commission finds that the public utility's rates are unlawful, the commission shall order a refund, with interest, at the legal rate of amounts collected after the date of filing of the petition that are determined to be in excess of the amounts which would have been collected under the rates finally

approved. In any hearing upon a complaint brought under this subsection, the complainant or complainants shall have the obligation to present evidence to preliminarily support the alleged overcharge; provided, however, that the burden of proof to show that the existing rate or the rate complained against is just and reasonable at all times shall be upon the public utility.

7. The commission shall issue a final order deciding any complaint pursuant to this section within eleven months of the filing of the complaint.

386.900. 1. Any electrical corporation proposing to construct, lease, or invest in any new generation plant, or proposing to enter into a contract for the purchase of power and energy that has a contract term longer than ten years; any gas corporation proposing to construct, lease, or invest in any new facilities for the storage of natural gas, or proposing to enter into a multi-year hedging arrangement for natural gas to be supplied to its Missouri retail jurisdictional customers; or any water corporation proposing to construct, lease, or invest in any new water treatment facilities, must provide notice to the commission of its proposal. The commission shall require such corporation to engage in a competitive bidding process and shall require such corporation to provide information regarding such process to the commission. The corporation shall identify all material for which a need for confidentiality is asserted.

2. The commission shall prescribe such rules and regulations to carry into effect the provisions of this section as it may deem necessary. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

393.190. 1. No [gas corporation, electrical corporation, water corporation or sewer] corporation, **person, or public utility** shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of [its] **the** franchise, works or system, necessary or useful in the performance of [its] **a public utility's** duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. **The commission shall grant its approval if the transaction is for a proper purpose and is in the public interest.** Every such sale, assignment, lease, transfer, mortgage, disposition,

encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void. The permission and approval of the commission to the exercise of a franchise or permit under this chapter, or the sale, assignment, lease, transfer, mortgage or other disposition or encumbrance of a franchise or permit under this section shall not be construed to revive or validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or to waive any forfeiture. Any person seeking any order under this subsection authorizing the sale, assignment, lease, transfer, merger, consolidation or other disposition, direct or indirect, of any gas corporation, electrical corporation, water corporation, or sewer corporation, shall, at the time of application for any such order, file with the commission a statement, in such form, manner and detail as the commission shall require, as to what, if any, impact such sale, assignment, lease, transfer, merger, consolidation, or other disposition will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the corporations involved in such disposition are located. The commission shall send a copy of all information obtained by it as to what, if any, impact such sale, assignment, lease, transfer, merger, consolidation or other disposition will have on the tax revenues of various political subdivisions to the county clerk of each county in which any portion of a political subdivision which will be affected by such disposition is located. Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or other disposition by any corporation, person or public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such corporation, person or public utility shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.

2. No such corporation shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business, or proposing to operate or operating under a franchise from the same or any other municipality; neither shall any street railroad corporation acquire the stock or bonds of any electrical corporation, unless, in either case, authorized so to do by the commission. Save where stock shall be transferred or held for the purpose of collateral security, no stock corporation of any description, domestic or foreign, other than a gas corporation, electrical corporation, water corporation, sewer corporation or street railroad corporation, shall, without the consent of the commission, purchase or acquire, take or hold, more than ten percent of the total capital stock issued by any gas corporation, electrical corporation, water corporation or sewer corporation organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the capital stock of any gas corporation, electrical corporation, water corporation or sewer corporation may, with the consent of the

commission, acquire and hold the remainder of the capital stock of such gas corporation, electrical corporation, water corporation or sewer corporation, or any portion thereof.

3. Nothing herein contained shall be construed to prevent the holding of stock heretofore lawfully acquired, or to prevent upon the surrender or exchange of said stock pursuant to a reorganization plan, the purchase, acquisition, taking or holding of a proportionate amount of stock of any new corporation organized to take over, at foreclosure or other sale, the property of any corporation whose stock has been thus surrendered or exchanged. Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation in violation of any provision of this chapter shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such gas corporation, electrical corporation, water corporation or sewer corporation or shall be recognized as effective for any purpose.

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